

W. O. HEINZE

IBLA 81-365

Decided November 19, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 54670 through CA MC 54677.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: W. O. Heinze, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

W. O. Heinze has appealed from the January 30, 1981, decision of the California State Office, Bureau of Land Management (BLM), declaring the Bentonite 1 through 6 and Brandy Wine 1 and 2 mining claims abandoned and void for failure to file an affidavit of annual assessment work on or before December 30, 1980. In its decision, BLM also noted that it had not received the requested location notices for these claims.

Appellant argues on appeal that "[we] believed our papers as submitted were in order." Enclosed with the appeal were copies of several documents: Proof of Labor for 1980 and 1979, serial number assignment, an October 20, 1979, BLM receipt acknowledging evidence of assessment work for the year 1979, and copies of recordation documents submitted for these claims in 1979. In addition, appellant submitted a photocopy of a BLM reminder of the need for evidence of assessment work prior to December 31, 1980, indicating a handwritten note on the reminder requesting copies of the original location notices for these claims.

Handwritten on the photocopy was the following: "This notice was never received. Otherwise we would have complied knowing the 1980 Proof of Labor had been filed."

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1976), requires the owners of an unpatented mining claim located prior to October 21, 1976, to file with BLM evidence of assessment work for the claim within the 3-year period following that date and each subsequent year. The Departmental regulation, 43 CFR 3833.2-1(a) promulgated pursuant to that statute requires:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to file the required information is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 CFR 3833.4.

Most of the documents appellant submitted related to recordation of these claims with BLM in 1979 or to the evidence of assessment work for 1979. The proof of labor for 1980 which appellant submitted on appeal, and is apparently contending was filed with the original papers, was recorded with San Bernardino County, California, but there is no indication that BLM received it before the appeal was filed, February 12, 1981. Moreover, the proof of labor indicates that it was filed in the county in 1979 and the statute expressly requires that annual filings be made in the county and with BLM each calendar year. Thus, it was incumbent upon appellant to file proof of assessment work in calendar year 1980 with the county and BLM. See James V. Joyce (On Reconsideration), 56 IBLA 327 (1981). The handwritten response "would have complied" on the photocopy of BLM's reminder does not lend credence to appellant's claim.

In any event, appellant failed to submit copies of the location notices on or before October 22, 1979. Filing copies of quitclaim deeds, where the location notices are available, does not constitute compliance with section 314(b) of FLPMA. See Marvin E. Brown, 52 IBLA 44 (1981).

Failure to comply with the mining claim recordation requirements, section 314 of FLPMA, produces a conclusive presumption of abandonment. By enacting this legislation, the Congress has placed the burden on the claimant to show that a claim has not been abandoned by complying with the requirements of the Act. Lynn Keith, 53 IBLA 192, 197, 88 I.D. 369, 372 (1981). Appellant has not shown that the required document was filed

timely. This Board has no authority to excuse lack of compliance with the statute or to afford relief from the consequences of noncompliance. Lynn Keith, *supra*; Glen J. McCrorey, 46 IBLA 355 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

